



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION II  
290 BROADWAY  
NEW YORK, NEW YORK 10007-1866

JAN - 9 2015

**BY EMAIL AND FOIA ONLINE**

Duvol M. Thompson, Esq.  
Holland & Knight LLP  
31 West 52<sup>nd</sup> Street  
New York, NY 10019

**Re: Freedom of Information Act Request EPA-R2-2015-001828**

Dear Mr. Thompson:

Your Freedom of Information Act ("FOIA") request, EPA-R2-2015-001828, seeks "all communications between CDE, the United States and the State of New Jersey concerning settlement negotiations up to the date of the signing of the Consent Decree; all documents the United States showed to or shared with CDE in its settlement negotiations with CDE up to the date of the signing of the Consent Decree between CDE, the United States and the State of New Jersey; and all information provided during settlement negotiations with CDE up to the date of the signing of the Consent Decree between CDE, the United States, and the State of New Jersey."

EPA has identified information that is responsive to the third category of documents outlined in your FOIA request that has been claimed as confidential and may contain trade secrets or commercial or financial information which is exempt from disclosure under 5 U.S.C. § 552(b)(4) ("Exemption 4"), consisting of: 1) non-public financial information provided by CDE; and 2) confidential settlements with former insurance carriers provided by CDE. If you are not in fact seeking one or both of these categories of information, please advise.

Because the scope of your request includes business information in the Agency's possession that is being claimed as confidential, a determination as to whether those claims are entitled to this confidential treatment must be made by the appropriate legal office; a final determination will be issued by the EPA Region 2 Office of Regional Counsel. In the interim, our regulations mandate that we initially deny that part of your request that seeks the business information to which reference is made above. This initial denial is made pursuant to Exemption 4 of the FOIA, 5 U.S.C. §552(b)(4).

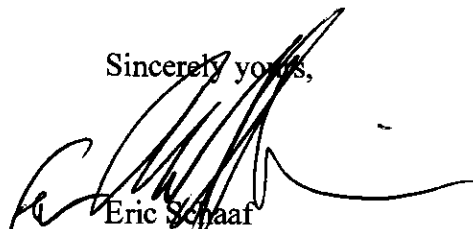
You have a right to appeal the above-mentioned initial denial. However, it is not necessary for you to do so because, as stated above, you will receive a final determination as to the business confidentiality claim and, concurrently, information about obtaining judicial review of that determination if you choose to pursue such.

If you choose to appeal this initial denial, you may do so in writing to the National Freedom of Information Officer, U.S. EPA, FOIA and Privacy Branch, 1200 Pennsylvania Avenue, N.W. (2822T), Washington, D.C. 20460 (U.S. Postal Service Only), E-mail: [hq.foia@epa.gov](mailto:hq.foia@epa.gov). Only items mailed through the United States Postal Service may be delivered to 1200 Pennsylvania Avenue, N.W. If you are submitting your appeal via hand delivery, courier service or overnight delivery, you must address your correspondence to 1301 Constitution Avenue, N.W., Room 6416J, Washington, D.C. 20004. Your appeal must be made in writing, and it must be submitted no later than 30 calendar days from the date of this letter. The Agency will not consider appeals received after the 30 calendar day limit. The appeal letter should clearly identify the determination being appealed, including the assigned FOIA request number shown above. For quickest possible handling, the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

As to potentially responsive materials not covered by a claim of business confidentiality, this Office is continuing to search for, locate and review additional record material. We are also coordinating with U.S. Department of Justice, which has received an identical request from Holland & Knight, to complete our response. To the extent our review reveals that this responsive material is not exempt from mandatory FOIA disclosure, these materials will be provided to you as expeditiously as possible. If our review leads us to conclude that any responsive material is exempt from mandatory disclosure, either in whole or in part, we will so notify you and you will be able to appeal that adverse determination in the same manner described in the paragraph immediately above.

Please contact Sarah Flanagan of my staff at (212) 637-3136 if you have any questions concerning this matter.

Sincerely yours,



Eric Schaaf  
Regional Counsel

cc: Wanda Calderon, Region 2 FOIA Officer